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FBI Law Enforcement Bulletin

Features

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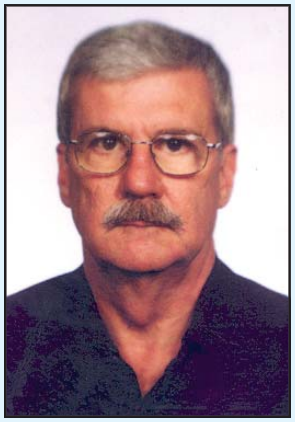
Dealing with Employee Stress

How Managers Can Help—or Hinder—Their Personnel

By JAMES D. SEWELL, Ph.D.

Stress is a critical issue within contemporary organizations and society. For law enforcement agencies, it can arise from a variety of sources. For example, stress may stem from circumstances or incidents that occurred as a result of the unique nature of an officer's job or personal life issues. Or, problems that develop similar to those in any workplace may cause it.

Unfortunately, some management practices also create stress in the life of the individual employee. While contemporary leadership and supervisory courses foster effective management techniques, some managers, often trained in traditional policies or management practices or, perhaps, more interested in their own advancement, forget that their actions can create a stressful work environment and impact the success and well-being of a work unit or organization. How are these less than effective managers creating such stress?



> ***"Effective law enforcement now... requires managers who adopt a reasoned, flexible approach to the changing demands...."***

Dr. Sewell formerly served as assistant commissioner of the Florida Department of Law Enforcement.

WHAT ARE THEY DOING?

Ineffectively Dealing with Assignments

Especially in law enforcement, many assignments and responsibilities must carry a sense of urgency because they are important and necessary and have a strict deadline. Yet, not every action is or needs to be portrayed as a crisis, particularly on the administrative side of an agency. Stress results when managers treat all assignments as the crisis du jour and pressure employees to labor under unnecessary deadlines and stressful conditions for normal tasks. Others fail to understand the magnitude of the tasks they assign or do not appreciate the time, detail, and effort necessary to bring a project to fruition. Unrealistic expectations and deadlines often make staff feel unnecessarily burdened and frustrated by their assignments.

Furthermore, managers who attempt to exert and maintain control over employees and their work by assigning it in a piecemeal fashion cause stressful environments. In these instances, employees continually must return to their supervisors for additional information before they can successfully complete any assignment.

A clear distinction exists between knowing what is going on within an organization and among employees and trying to perform or dictate staff members' jobs. Supervisors who micromanage place too much emphasis on structuring and controlling subordinates' workdays and dictating the only acceptable response to assigned tasks. They tend to focus too little on developing employees' knowledge, skills, and abilities that will help them work independently and achieve their own success.

Communication is, of course, a critical element in effective agency management. Some managers may find interpersonal communication difficult, and they may avoid interaction with employees, choosing to communicate only via written memoranda or e-mail. Others might limit face-to-face contact with their subordinates, preferring to stay in their own offices. In all of these cases, effective communication is less likely to occur, and employees frequently fume with frustration.

Difficulties in Evaluating Performance

Law enforcement personnel recognize that discipline and performance evaluations are necessary parts of the job. They expect, however, that managers will administer both fairly and consistently. Organizational stress arises when managers show favoritism to certain subordinates, invoke discipline for no apparent reason, or evaluate staff against ill-defined or arbitrary standards.

In most agencies, while the majority of employees appropriately respond to community or organizational expectations for their performance, some fail to meet these standards or display the professional values exhibited by their peers. In such

cases, employees expect managers to deal with problem personnel. When managers ignore nonperformance or provide excuses for these subordinates without addressing the actual problem, they undermine morale and add to the stress and frustration of those who simply seek to do right and expect bosses to do the same.

Supervisors who appreciate employees' accomplishments and comprehend the volume and intensity of their workloads remain key to positive emotional health of personnel. Yet, in spite of this accepted fact of management, some still fail to acknowledge the impact of multiple assignments and the demands required of professional performance. These managers who have yet to learn to say thank you cause stress for their employees and fail to reach their own expected leadership potential.

Inappropriate Responses

Effective law enforcement now, perhaps more than ever, requires managers who adopt a reasoned, flexible approach to the changing demands placed upon them and their resources. Community concerns, internal politics, and external political realities frequently have generated inflexible, knee-jerk managerial responses to the immediate issue. Such ill-timed and poorly planned reactions lack adequate consideration about anticipated or unintended consequences and place the most significant stress upon the individuals who carry out the decisions and most directly live with the results.

Perhaps, employees feel most frustrated when managers refuse to give or share credit for a team's success or decline to accept responsibility for failure. People desire appreciation and acknowledgment of their contributions to a group's accomplishments. At the same time, they respect managers who acknowledge their own failures and recognize that many frustrations within an organizational unit should not rest solely on an individual employee.

> ***...some management practices also create stress in the life of the individual employee.***

WHAT STEPS CAN MANAGERS TAKE TO REDUCE EMPLOYEE STRESS?

How can managers reduce the stress they cause employees and improve their own effectiveness? In addition to understanding the impact of their actions on subordinates and continuing to learn and apply productive leadership and management skills, managers can take several other specific steps.

Communicating with Others

In many organizations, a collapse of communication causes the breakdown in relations between labor and management. Within smaller units, when managers fail to communicate with their employees or do not encourage reciprocal communication, negative results ensue. Effective leadership within an agency and management of human resources require effective and ongoing communication at all levels. To ensure such communication, everyone within the organization must view managers as fair, open, and honest. Trust between managers and subordinates is required for the most successful operations. From the beginning, employees should understand managers' expectations, particularly in regard to how they want personnel to approach their jobs and how they plan to conduct discipline and performance evaluations.

The aura of crisis some managers attach to work efforts and communicate to their employees too frequently results

from their failure to adequately plan. Devoting time to planning for their organization's operations and even for their own day will reduce the stress that they cause for their subordinates.

Times of great stress are, of course, dramatic ones for law enforcement employees. One of the important roles managers play during such periods is a safety valve, an emotional outlet through which employees appropriately can vent their anger, fear, frustration, and concerns. At the same time, managers must successfully buffer subordinates from the stress produced by those higher in the chain of command, including elected and appointed officials outside the agency.

Personnel appreciate managers who communicate a direct interest in their performance and are involved in the activities of the organization. In law enforcement agencies, employees respect leaders who remember their roots, spend time on the street in spite of administrative demands, and support subordinates as they do their jobs. By its nature, contemporary law enforcement is a stressful profession, and that stress permeates the department. However, effective leadership practices can increase communication and reduce the tension attributed to the organization and its hierarchy. "Law enforcement leaders wanting to reduce the psychological stress caused by poor supervision and apathetic attitudes toward employees must be committed to making the workplace a 'worthplace'—where people care about people and where employee needs are emphasized and by developing a healthy environment that is perceived by the employees as a good place to work."[1]

"Personnel appreciate managers who communicate a direct interest in their performance...."

In addition, knowing and focusing on employees—their strengths, weaknesses, career aspirations, and families—can lead to effective workplace communication. Armed with that knowledge, managers can appropriately assign tasks and responsibilities and ensure that employees perceive their work as meaningful and valuable.

Sending Positive Messages

The law enforcement profession is, by its nature, a challenging experience. Officers and support personnel deal with people in their worst times of crisis, pain, and raw emotions. Managers must realize the importance of their support of subordinates, especially when the crisis impacts those personnel. Such a role, akin to that of a cheerleader, becomes particularly necessary when the negative issues occur within the organization itself, rather than as a byproduct of the work, and managers have to maintain the morale of the agency. Managers must maintain an outwardly positive attitude, especially in the presence of their subordinates—for the health and mission of the organization, they cannot afford to be viewed as negative or against the administration.

Further, employees can frequently become pawns between battling managers. In the context of effectively dealing with employee stress, managers should have two primary considerations. First, within proper legal and ethical boundaries, they have an obligation to maintain loyalty to the organization and the people for whom they work. Second, they have a responsibility to keep their own counsel. Employees do not need to hear their own bosses' emotional outbursts toward the organization, its hierarchy, or their own peers.

It is, of course, important to acknowledge the seriousness of

contemporary law enforcement and its critical social mission. At the same time, managers should recognize that such an intense environment still needs humor and personality. This profession requires that its personnel, for their own mental health, should search for the positive side, accepting that the seriousness of job tasks can be alleviated. Managers who take their jobs and themselves too seriously risk damaging the emotional well-being of their personnel, as well as themselves.

Part of the maturation process for organizational leaders requires them to realize they must accept responsibility for their subordinates' actions, which are not always under the manager's direct control, as well as for their own. Absent criminal or ethical violations, it may be more appropriate for managers to accept some of the responsibility when subordinates fail to reach the desired accomplishment and then use the situation as a learning experience for all.

Focusing on the Employee

Effective job performance requires a balance of professional demands, family responsibilities, and personal issues. Failure to acknowledge and accept the relationship between each frequently can result in conflict, frustration, and anger that spill over all parts of a person's life. Performing effectively on the job entails simply learning to balance employment demands with life's other elements. For managers, this also means that they not only learn to apply such balance in their own lives but also accept it as a necessity for the healthy work and personal lives of their employees.

Managers also should work to develop those who serve in their organizations, helping them do their jobs more effectively and with fewer distractions through programs in stress and time management and personal finance, for instance. Such development results in an investment in the future of the agency through its people.

Reducing Employee Stress

12 Tips for Managers

1. Ensure effective two-way communication with employees.
2. Be fair and honest in communications with personnel and confirm that they understand your expectations.
3. Act as a safety valve to allow employees to vent and protect them from stress from others higher in the chain of command.
4. Be involved in employee assignments and available for guidance.
5. Project a positive attitude.
6. Lighten up.
7. Accept the responsibility of both leadership and management.
8. Learn to balance home, office, and personal stress.
9. Foster a healthy working environment.
10. Learn to build and encourage employees' self-esteem.
11. Plan effectively.
12. Display organizational loyalty and maintain your own counsel.

Leadership Books

1. James M. Kouzes and Barry Z. Posner, *Leadership Challenge*, 3rd ed. (San Francisco, CA: Jossey-Bass, 2002).
2. Earl E. Weick and Kathleen M. Sutcliffe, *Managing the Unexpected* (San Francisco, CA: Jossey-Bass, 2001).
3. Jim Collins, *Good to Great* (New York, NY: Harper Business, 2001).

CONCLUSION

By the very nature of their chosen profession, with its high demands and heavy personal toll, law enforcement officers will continue to experience stress throughout their careers. The various methods managers use to administer assignments, evaluate performance, and handle responsibility can directly impact the amount of employee stress.

However, managers can effectively mitigate some of these stressors frequently caused by organizational issues, poor leadership, and ineffective management. Managers who communicate with their personnel by acting as a safety valve, taking a direct interest in their performance, and focusing on their strengths and weaknesses can help eliminate tension. It is critical, then, that leaders and managers in law enforcement agencies recognize how they contribute to the stress of their employees and take aggressive steps to reduce their stress-causing practices. ✦

Endnotes

[1] Richard M. Ayres, *Preventing Law Enforcement Stress: The Organization's Role* (Alexandria, VA: National Sheriffs' Association, 1990), 33-35.

Bulletin Alert

Protective Vests

A recent response to a home-invasion call illustrates a disturbing trend, criminals donning protective vests. When the first officer arrived, he saw the suspects running from the rear of the house. As he exited his patrol car, one of the subjects began shooting at him. The officer returned fire and gave chase on foot. After about a block, the suspect ran out of ammunition and tried to hide under a truck. When other officers arrived, they arrested him and, to their surprise, discovered that he was wearing new, military-issued body armor. While not an unusual threat in urban areas, it understandably surprised these officers who serve a small town of only 6,000 people in rural South Carolina. Protective vests, available online and via a variety of commercial operations, have saved many officers; however, criminals have begun to use them, too, creating additional danger for law enforcement professionals and the citizens they serve.

Contemporary Policing: Controversies, Challenges, and Solutions, *edited by Quint C. Thurman and Jihong Zhao, Roxbury Publishing, Los Angeles, California, 2004.*

Quint C. Thurman and Jihong Zhao have compiled what is probably the most contemporary series of articles on policing to date. Leading experts, such as Lawrence W. Sherman, Ronald V. Clarke, Eli B. Silverman, David Weisburd, and Anthony V. Bouza, offer a variety of perspectives on issues from innovative policing strategies and promising new approaches for crime prevention to internal and external challenges to policing. All of the articles first appeared in respected academic journals or government publications.

Divided into seven sections, the text consists of 30 articles. Part 1, "New Policing Strategies," contains four articles on how policing for crime control has evolved over the last 20 years. Ronald V. Clarke provides one of the best perspectives on the future of policing by succinctly stating that "problem-oriented policing represents the future of policing." The national trend clearly has been toward focused situational crime prevention strategies. Clarke identifies the current deficiencies in problem-oriented policing practices and suggests how to improve the situation. Also in this section, Eli B. Silverman offers insight into the New York City Compstat experience, a policing practice that has diffused profusely throughout the policing industry in the last 10 years.

Part 2, "Promising Approaches to Crime Reduction and Prevention," examines promising issues in the crime control arena. In this section, Lawrence W. Sherman presents one of the most compelling pieces of research on promising strategies and programs, as well as those not as encouraging. Too often, police executives embark upon a strategy without any empirical understating of its success or failure. This approach frequently perpetuates the myth about a program's success and wastes money and effort. Sherman identifies four strategies that work: 1) increased directed patrols in street-corner "hot spots" of crime, 2) proactive arrests of serious repeat offenders, 3) proactive drunk driving arrests, and 4) arrests of employed suspects for domestic violence.

Parts 3 and 4 review the challenges facing law enforcement from inside the agency (internal challenges) and from outside (external challenges). Thomas J. Cowper describes how policing suffers from a misapplication of the military model, which hampers the agency's flexible character and organizational adaptability, and Anthony V. Bouza delivers provocative insight into police work and public expectations of law enforcement agencies in contemporary American society.

Part 5, "Innovations, Boundary Spanning, and Capacity Building," dovetails on parts 3 and 4 and responds with necessary organizational adaptations, individual behaviors, operational activities, and management styles that seek to improve police organizations. Five

articles highlight the internal and external environments that drive organizational change, including policing's core mission and employing technology.

Part 6, "Police Deviance and Ethical Issues," is perhaps the most important section of the book. Four articles cover the breadth of police corruption, from the inaccuracies portrayed by the media to sexual misconduct and drug abuse. Brian L. Winthrow and Jeffrey D. Daily explore the perplexing issue of gratuities from the slippery slope perspective, essentially a broken windows approach to gratuities: controlling small trivial gifts and gratuities inevitably will curb larger ones.

The last part, "The Challenges Ahead," considers the future of American policing. Three articles explore the direction of community policing, fear reduction, and the difference between police and policing. David H. Bayley and his colleague Clifford D. Shearing specifically tackle the future of policing by examining the emergence of privatization.

This anthology is an excellent addition to any college course on policing, especially police and the community. Law enforcement practitioners will find it useful as a reference guide to augment policy positions and to assist with strategic planning endeavors.

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The *Bulletin's* E-mail Address

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We would like to know your thoughts on contemporary law enforcement issues. We welcome your comments, questions, and suggestions about the magazine. Please include your name, title, and agency on all e-mail messages.

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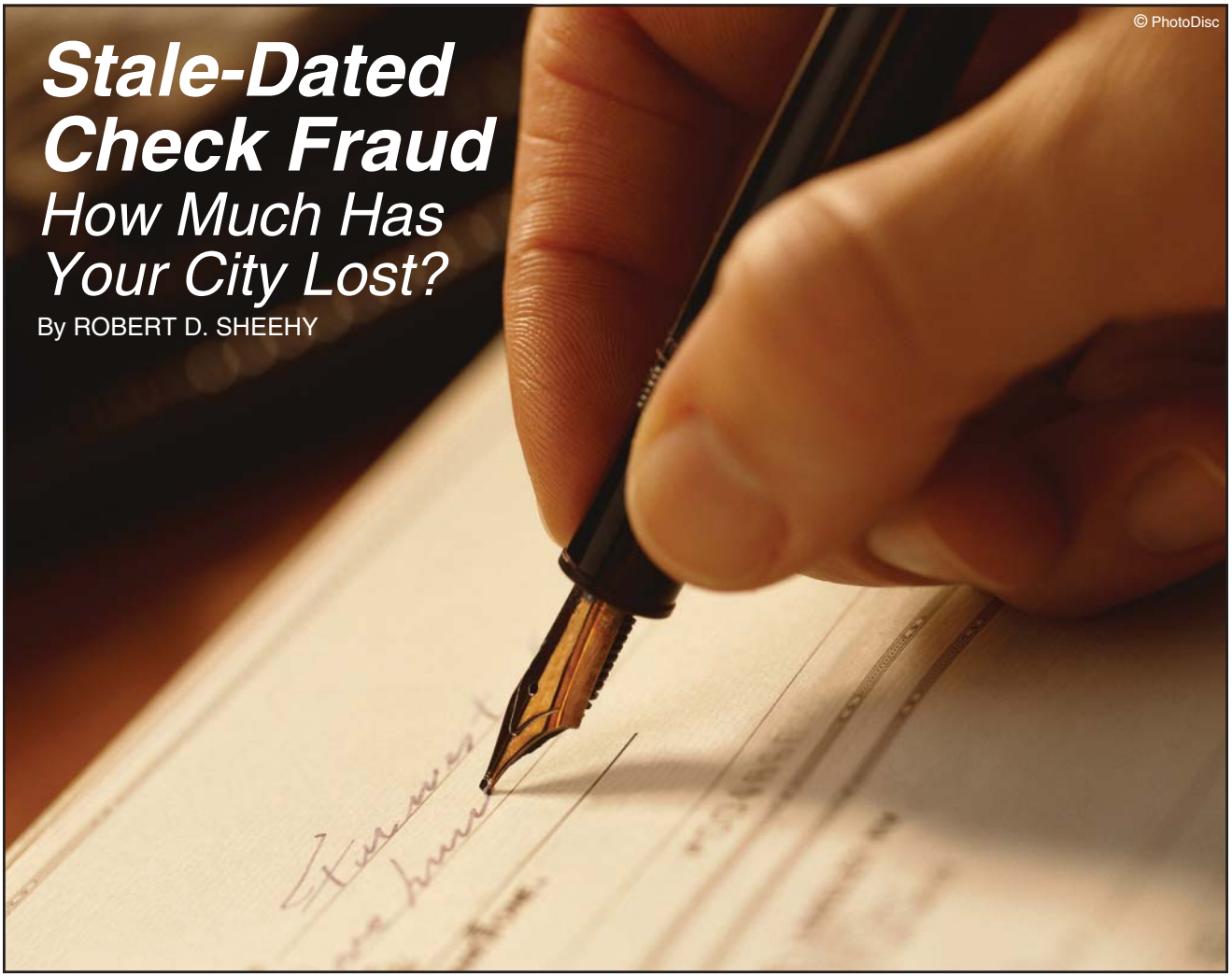

Stale-Dated Check Fraud

How Much Has Your City Lost?

By ROBERT D. SHEEHY

A recent investigation uncovered a novel avenue of fraud whereby criminals recruit municipalities as unwitting coconspirators to their own loss. Initially brought to the attention of the U.S. Attorney's Office for the District of Maryland by a local municipality, the investigation, conducted jointly with the FBI, concerned a vendor who contacted the city's department of finance to request the reissuance of a check. The retailer explained that the original check, received 1 year earlier, had been misfiled and only discovered during a routine review. Because the date was well beyond the 180-day life allowed by the municipality, as indicated on the check, the merchant sought a replacement. Upon reviewing its records, the city discovered that a third party claiming to represent the vendor already had requested and been issued a replacement check. The third party, in fact, had provided a signed limited power of attorney showing that the retailer had entered into an agreement with this company to collect the payment. Because of the significant monetary amount, the municipality began an audit to determine what had occurred. It quickly discovered that this third party, located out of state, had paid a nominal charge and received a stale-dated check listing.[1] The city's initial review disclosed four other requests made by and checks issued to

this same firm for stale-dated check replacements.

The investigation subsequently identified a total of nine replacement checks, totaling in excess of $157,000, as having been requested and received by this third party from the complainant municipality during a 9-month period. It also determined that this firm received numerous checks from multiple jurisdictions under similar circumstances. Further analysis of those records identified additional companies acting in concert with the original subject business or having the same ownership ancestry. A review of disbursements made from various bank accounts operated by these companies disclosed that no payments were made to any of the original vendors that the third parties claimed to represent.

In total, the main subject of this investigation received more than $.5 million in municipal government payments through fraudulent requests and representations. However, and more important, this investigation illuminated a heretofore underestimated vehicle for committing fraud.

DEFINING THE TERM

Typically, a government check carries a life limitation printed on the front warning that it will become void after a specified number of days. Banks should not honor or negotiate a check beyond the indicated period.

The issuing municipality has a department or bureau that accounts for issued checks. A subset to this accounting involves the maintenance of a stale-dated check registry of those checks not negotiated within their allowable life limitation. The issuance of a check in payment for provided goods or services does not eliminate a city's liability. Jurisdictions recognize this and will reissue a payment upon the request of a vendor after determining that the original check has not been negotiated and is included on the stale-dated check list. Many also honor requests for repayment to third-party collection agents acting on a vendor's behalf.

The investigation presented at the beginning of this article determined that many municipalities broadly interpret public information or open-government requests to include providing stale-dated check data. For a nominal fee, $25 to $60 encountered during this case, the city will provide detailed information or the entire stale-dated check list to any requester. Numerous jurisdictions even post their entire stale-dated check list on their municipal or department Web site. Usually, the provided information includes exactly what the municipality requires for reissued payments.

UNDERSTANDING THE PROBLEM

Although a number of lawful individuals and firms locate a vendor included on a stale-dated registry, negotiate a recovery fee with them, and make

"This investigation highlighted several areas that can help officials recognize stale-dated check fraud."

Mr. Sheehy, a retired FBI special agent and former investigator for the U.S. Attorney's Office in Baltimore, Maryland, currently works as a consultant.

a collection on their behalf, less scrupulous people have found this situation ripe for fraud. After all, the stale-dated check list contains all of the required data needed to request a replacement check. Therefore, it should come as no surprise that some have decided to forego locating and negotiating with the original vendor. Rather, they simply request a reissued payment check and provide a forged power of attorney form, which should satisfy most questions that might arise.

To date, victimized municipalities represent both city and county jurisdictions in states located on both coasts, as well as in the central plains. Because of its simplicity, this fraud could easily migrate to state and federal government entities.

Research has disclosed that every jurisdiction in the United States, regardless of size, has amassed countless stale-dated checks amounting, conservatively, to hundreds of millions of dollars. These checks are an accrued liability for a municipality until paid to the rightful vendor or until applicable law allows the jurisdiction to claim the funds through escheatage.

Another area of weakness in municipal accounting targeted for exploitation by these same individuals is that of foreclosure, specifically tax sales. Properties seized and sold by government auction at times will produce a surplus owed to the original debtor. As in the case of stale-dated checks, municipalities have been routinely providing listings of these accounts, and the third-party requesters have been submitting fraudulent powers of attorney seeking to recover these funds supposedly for the intended recipient.

Tips for Avoiding Stale-Dated Check Fraud

- Request additional information from the third-party agent.
- Limit the information provided on the stale-dated check lists.
- Verify the recovery authorization.
- Conduct independent research.
- Impose additional requirements.

RECOGNIZING DISCREPANCIES

This investigation highlighted several areas that can help officials recognize stale-dated check fraud. Some prove easy to detect, whereas others require further examination.

Lack of Information

The letters and powers of attorney encountered in this investigation simply regurgitated the information supplied by the municipalities on their stale-dated check lists. The initial victim jurisdiction did not include the original vendor's address on the registry; therefore, the letter and power of attorney form, drafted by the third party, likewise did not contain an address or any other contact information regarding the vendor it supposedly represented. The power of attorney contained only an authorizing signature, allegedly made by a responsible person within the business. The name and position were not included, and no contact address or telephone number appeared for the vendor or a representative on any of the documents.

Crude Appearance of Forms

The letters and power of attorney forms contained nonprofessional variations in the letterheads, such as commas and ampersands appearing in one document but not repeated on another. One of the subject firms encountered in this investigation did not have a business telephone or facsimile number in its letterhead. Instead, it listed a business contact telephone number in the body of the letter, and a quick check via

the Internet disclosed it as a cellular phone.

Questionable Notary Public Certifications

Only half of the power of attorney forms contained notary public stamps. Some of these stamps were issued in states unlikely to house the headquarters of the original vendor; others carried expired commission dates.

Duplicate Forms

The letters and power of attorney forms from the supposedly separate and independent third-party collection agents encountered in this investigation were identical. They all contained exactly the same wording and other characteristics.

Dubious Third-Party Agents

In this investigation, verification with the secretary of state's office in the state from which one of the third-party companies operated determined that the firm was incorporated as a barber shop. Most of the other third-party agents were not legally incorporated in the state.

FINDING REMEDIES

Although this scheme may have netted the defendant in this case a small fortune, stale-dated check fraud is not a particularly troublesome area if encountered. Limitation, verification, and research should eliminate the possibility of it occurring. The author suggests five basic steps for municipalities to take to avoid falling prey to this problem.

1) Request additional information from the third-party agent: This can include the identity of and contact information for the corporations and individuals represented by the asset-recovery firm seeking to obtain stale-dated or other monetary listings.

> ***It is far easier to bar future fraud than it is to recover past losses.***

2) Limit the information provided on the stale-dated check lists: By blocking the dollar amount of previously issued stale-dated checks, third-party agents could not determine the "choice" amounts to request for replacement. Too many "blanket" replacement requests from one third-party agent would readily raise suspicion. Jurisdictions should consider yearly publication of stale-dated vendor identities—by name only—in local newspapers. This should satisfy legal notice as to funds being held for others and open-government obligations as well.

3) Verify the recovery authorization: Because the municipality has the original vendor's invoice, it should be easy to contact the business to determine the propriety of third-party representations.

4) Conduct independent research: At a minimum, municipalities should conduct an annual audit review of the stale-dated check lists to identify those vendors with listed checks of significant value. Employing well-known search services can help locate most of the significant vendors. Jurisdictions then can send a verification letter to them regarding the nonnegotiated instrument.

5) Impose additional requirements: If the original, now stale-dated, check was made payable to an individual, the municipality could require the third-party agent to provide a copy of that person's driver's license prior to release of a reissued check. Jurisdictions also could consider mandating that reissued checks be mailed to the original company, rather than directly

Recommendations for Reducing the Potential for Fraud

- Restrict access to stale-dated check and similar registries, including internal departmental employees.
- Contact the state comptroller's office or similar agency regarding state rules or codes governing release of financial information pertaining to unclaimed assets.
- Correspond only with third-party collection agents who provide verifiable identifying documentation regarding a specific client.
- Set up or add to an existing municipal Web site the ability to query by name (individual or company) only for unclaimed assets/funds.
- On a yearly basis, have the names of individuals and businesses whose funds are held published in a newspaper with statewide circulation.
- Consider conducting independent research to locate the legitimate owner of the funds. An A-B-C analysis conducted periodically will identify the limited number of owners of held property of significant value, and public search services can help locate their addresses for sending verification letters.
- Establish a policy of mailing payment *only* to the original owner of the funds, thereby leaving third parties to make their own collections.

to the third-party requester. Finally, demanding that the third-party agent provide a copy of the original invoice should evidence that the vendor agrees with the third party's actions.

CONCLUSION

The window of opportunity existing to the felon, from when the payment is first rendered void until the funds either are paid to the rightful vendor or can lawfully revert to the jurisdiction, must be closed. It is far easier to bar future fraud than it is to recover past losses. Although this investigation resulted in the indictment and conviction of only one subject, it indicated that others apparently have engaged in similar fraudulent activity. Municipal accountants may well be able to locate additional, similarly maintained accounts that need greater protection.

This investigation could locate only one suspicious activity report involving $2,000 as having been previously filed, even after two municipalities and three different banks had become aware of the attempted fraud being conducted by the subject. Such lack of notice is exactly what these individuals count on. They also believe that should their illegal activity be discovered, it will be viewed as an isolated occurrence, and the full impact of their fraud will not be realized or appreciated.

Municipal accountants and auditors should review their financial systems and procedures with their legal departments, particularly as they pertain to public access to financial records and the reissuance of payments. Stale-dated check fraud can be stopped through vigilance and cooperative efforts. ✦

Endnotes

[1] A stale-dated check is a check officially issued by a municipality during the routine conduct of business that was not negotiated within the allowable life of the check.

Focus on Technology

Police Education for the 21st Century

By Kurt R. Nelson, MPA

Today, law enforcement agencies face a dilemma. Departments across the nation confront new burdens, such as computer crimes, identity theft, and other domestic problems, unheard of a generation ago, let alone the threat of terrorism and the need for homeland defense. Unfortunately, resources are not growing at the same pace as the demand for police services. Many agencies actually have seen a drop in funding. In such cases, training often represents one of the first budget items cut because many administrators see education as addressing the future and use the analogy "fire prevention is great, but not when the house already is on fire."

Part of the problem rests with the training itself. While new innovations, such as computer-enhanced teaching tools and software-driven displays, seem cutting edge, police education has not fundamentally changed in generations. Agencies send officers to a central site where instructors work with them. Of course, some subjects, including driving, patrol tactics, firearms, and defense strategies, require such hands-on instruction. However, many departments have recognized a need for overall change. Small agencies cannot afford to have a central training facility, and large departments often do not wish to address specialized needs in-house. So, in many cases, agencies must choose either to send officers to an outside facility and incur the costs and temporary staffing shortages or forego the training.

A lot of departments would like to improve the education of their officers without these difficulties. How can agencies obtain training and maximize resources?

New Partnership

For part of the solution, some agencies have relied on higher education. Certainly, college can help officers meet current and future demands confronting them and their departments. However, standard academic courses are not agency specific, usually require employees to attend on their own time, and, often, are economically or geographically inaccessible to small departments.

Recognizing these shortcomings, several Oregon law enforcement agencies joined in an effort to move police training into the 21st century. While the steps taken reflect the goal of developing specialized education in crime analysis, the lessons learned could apply to a variety of training needs, including basic skill sets.

The participants strived to offer the advantages of higher education and, at the same time, address the need of several departments to receive crime analysis courses while avoiding the high costs, travel, and staffing problems associated with sending employees to outside training sites. In keeping with the best tenets of community policing, the agencies involved sought local partners to help solve the problem.

In September 2003, Clackamas Community College started serving as the community partner. The chair of the criminal justice department met with the agencies and assisted in determining how to provide them with the desired training without having to bring the student to the school and, further, how to ensure that the education meets the needs of the various departments.

As with any true partnership, each participant has offered resources. The agencies supply subject experts who either become adjunct professors (if they meet the advanced degree requirement) or work with current criminal justice instructors to ensure that the material rises to the level of training required by the agencies. Also, the school reviews the curriculum to guarantee its quality and worthiness of college-level credit.

Innovative Program

Although many agencies have partnered with local colleges to bring learning opportunities to personnel, this effort has proven innovative in its medium of instruction, utilizing the Internet for online classes. Instead of physically going to a campus, officers can complete courses at home or at the office—anywhere they can access the Web—at times agreeable with their work and family schedules.

Fourteen 1-credit college-level classes meet agencies' training requirements in crime analysis. The courses—applicable to an associate degree and transferrable to 4-year colleges—fall into four broad categories: 1) basic crime analysis, 2) crime scene analysis, 3) intelligence analysis, and 4) administrative/research/statistical analysis. Students find them very manageable because, in addition to their availability on the Internet, the classes are short, requiring only about 12 hours of studying and reading. Officers also regard them as valuable because, as the agencies supply subject-matter experts, the courses are based on real cases and provide students the opportunity to work on authentic projects. Participants can submit their assignments electronically to the instructors for useful feedback on their progress.

Positive Results

This innovative program has seen great success. Its enrollment has indicated extensive interest. Students from across the United States and foreign countries, such as Canada, Mexico, and Hong Kong, have taken courses. Agencies represented have included the Royal Canadian Mounted Police, the U.S. Department of Justice, the U.S. Postal Service, and various police departments.

These students have provided positive feedback about the quality and convenience of the program. For example, an analyst from a Nevada police agency e-mailed, "I really enjoyed the material and especially liked being able to work at my own pace. This is important because I have three very active children and a full-time job. I...was so pleased that I am going to enroll in two classes for the next semester...." An officer from Ontario, Canada, wrote, "A solid foundation in crime analysis...concise and well-written with the student in mind." And, a participant from a federal

Program Overview

In cooperation with local police agencies, Clackamas Community College offers 14 crime analysis classes through distance learning. These 1-credit courses fall into four broad categories:

1) Basic crime analysis
2) Profiling violent crime
3) Intelligence analysis
4) Administrative, statistical, and technical analysis

Each category has a series of classes that build on each other, culminating in a capstone course for the series. Additional classes, such as criminology, criminal law, and other pertinent topics, are available online as well. The courses are open to all students and professionals without additional out-of-state costs.

Additional information is available online at http://www.clackamas.edu.

law enforcement agency stated, "Courses very informative...truly interesting and quite enjoyable. Instructor extremely helpful."

Also, Clackamas Community College has received professional recognition for this program, specifically the intelligence analysis component. In its 2005 Professional Service Awards, the International Association of Law Enforcement Intelligence Analysts presented the school with the award for the category "Significant Contributions to Professional Education in Law Enforcement Intelligence," recognizing the quality of this unique educational opportunity.

Conclusion

While this particular case highlights the success of Clackamas Community College's program, it also proves the feasibility of police education that meets the needs of today's officers and agencies, even in the midst of limited resources. Many topics do not require a student to sit in a traditional classroom. Subjects, such as criminal law, report writing, computer skills, blood-borne pathogens and hazardous material, and numerous others, work well in a distance learning format.

Improving the education and training of criminal justice employees—sworn or not—seems limitless. It only requires a willingness to step away from the confines of traditional practices. Opportunities exist for enhancing and improving employees' performance without personnel ever leaving the work site. This is the advantage of the 21st century educational model. ✦

Mr. Nelson, a police officer, also is an instructor at Clackamas Community College in Oregon City, Oregon.

The Three Cs of Leadership

Do what you can, with what you have, where you are.

—Theodore Roosevelt

Effective leaders understand the need for obtaining and properly wielding power within their organizations. If they think of their position as the vehicle that enables them to make an impact in their agencies, then power is the fuel that moves them along. Regardless of how big the engine is, if the fuel tank is empty or the octane is not high enough, chances are they will not go very far. So, how can law enforcement leaders increase their power bases and accomplish more? Developing personal character, competence, and commitment is a time-proven method.

Character, in terms of doing right versus wrong, is obvious. To build their power, leaders can focus on aspects of character that might not get the attention they should. Follow-through represents one area. Often, leaders make promises while on the run, to the effect of "I'll get back to you on that." At that moment, leaders may have had every intention of keeping those promises. However, time and circumstances often overcome their best intentions, and they find themselves down the road realizing they failed to follow through. More powerful leaders remain deliberate and develop a system for ensuring that they keep those well-intentioned promises.

Competence proves crucial to building the trust on all levels that increases leaders' power. Effective leaders continuously develop new skills while honing old ones. As others observe their leaders' demonstrated competence, they more likely will follow their lead and invest more authority in them.

Commitment to the mission and to the people always will serve to increase trust levels and fill leaders' power tanks. Leaders find that choosing to be exceptional is a daily decision, as is opting to empower and develop those around them. Those leaders who always seem to be building momentum have found a way to practice the maxim of "Mission first, people always." Making an ongoing investment in the three Cs of leadership is an excellent way not only of keeping leaders' power tank full but of boosting the octane in them. ✦

Jeffrey Lindsey, special agent instructor and program manager in the Leadership Development Institute at the FBI Academy, prepared Leadership Spotlight.

Breaking the Bank

By EDWARD HENDRIE, J.D.

The process by which drug traffickers and other criminals introduce proceeds gained through their criminal activities into legitimate financial markets is known as money laundering.[1] According to the International Monetary Fund, money laundering activities are estimated to constitute between 2 and 5 percent of the world's Gross Domestic Product, amounting to approximately $600 billion annually.[2] The Drug Enforcement Administration (DEA) explains the methods drug traffickers currently use to launder their illegal proceeds:

> Drug traffickers use various methods to launder their profits both inside and outside of the United States. Presently, some of the more common laundering methods include: the Black Market Peso Exchange, cash smuggling (couriers or bulk cash shipments), gold purchases, structured deposits to or withdrawals from bank accounts, purchase of monetary instruments (e.g., cashier's checks, money orders, traveler's checks), wire transfers, and forms of underground banking, particularly the Hawala system.[3]

In addition to tracking, seizing, and forfeiting laundered illegal proceeds, the federal government can also prosecute a person for the separate crime of money laundering. A person involved in crimes traditionally associated with racketeering, which include, but are not limited to, murder, kidnapping, arson, robbery, and felonious drug trafficking,[4] can be

prosecuted under federal law for laundering the proceeds of those crimes. Federal money laundering investigations are among the most effective ways to thwart the criminal schemes of drug and organized crime groups.

For example, in Operation Juno, the DEA Atlanta Field Division provided financial services via the Colombian Black Market Peso Exchange.[5] That operation resulted in the arrest of 40 suspects, $10 million in seizures, the seizure of 3,601 kilograms of cocaine, 106 grams of hashish oil, and civil seizure warrants of 59 domestic bank accounts.[6]

> ***"...money laundering activities are estimated to constitute between 2 and 5 percent of the world's Gross Domestic Product...."***

Special Agent Hendrie, DEA Legal Section, is a legal instructor at the DEA Training Academy.

Three Stages of Money Laundering

The first stage in money laundering is the placement of the proceeds of criminal activities into the financial system. Currency is difficult to handle and sometimes hard to move. Large amounts of currency attract attention. For that reason, the placement stage is the most vulnerable stage in the money laundering process. At this stage, government reporting requirements for currency transactions create an impediment for criminals introducing their proceeds into legitimate commerce.[7]

Once the money is placed in the financial system, it must be moved and divided to hide its illegal origin. This second stage in the money laundering process is the layering process, which involves breaking up the funds and distributing them from one nation or financial institution into several. Breaking up the funds makes it difficult to trace their illegal origins. The complexity of the layering is one of the ways in which the money launderer seeks to conceal the illegal nature of the proceeds. The objective of this activity is to create a complicated maze of transactions so that it becomes a difficult puzzle that will frustrate government efforts to discover the illegal source of the funds.[8]

The third, and final, stage is integrating the money into legitimate commerce. Once the funds are layered, the criminals who control the money can integrate those funds into the channels of ordinary commerce. They then can use them in legitimate business enterprises without the usual suspicion that goes with transacting business using large amounts of cash.[9]

Title 18, U.S. Code, Section 1956

Title 18, U.S. Code, Section 1956 (hereinafter Section 1956) is the primary federal money laundering statute. It is a violation of Section 1956(a)(1) for someone to conduct or attempt to conduct a financial transaction that involves[10] the proceeds[11] of specified unlawful activity (SUA) while knowing[12] that the property involved in the financial transaction represents the proceeds of some form of unlawful activity[13] and to do so: 1) with the intent to promote[14] the carrying on of an SUA; 2) with the intent to engage in conduct constituting tax evasion,[15] fraud, or a false statement under the Internal Revenue Code; 3) knowing[16] that the transaction is designed in whole or in part to conceal or

disguise[17] the nature, location, source, ownership, or control of the proceeds of an SUA; or 4) knowing that the transaction is designed in whole or in part to avoid transaction reporting requirements under state or federal law.

One federal transaction reporting requirement is the Currency Transaction Report (CTR).[18] A CTR must be filed[19] when a domestic financial institution[20] is involved in a transaction for the payment, receipt, or transfer of United States coins or currency[21] in an amount greater than $10,000.[22] A CTR is required to be filed for all currency transactions with a financial institution over $10,000, regardless of the source of the funds.[23] It is not required that the funds be proceeds of illegal activity. There are civil[24] and criminal penalties[25] for violating the CTR filing requirements. In addition, it is a violation of federal law,[26] subjecting the violator to criminal penalties[27] if the person, for the purpose of evading the CTR filing requirements, causes or attempts to cause a financial institution not to file a CTR,[28] to file a false CTR,[29] or if he structures[30] transactions with one or more financial institutions in such a manner as to avoid the filing of a CTR.[31]

The term *transaction* has a particular meaning under Section 1956. For purposes of Section 1956, "transaction includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transferred, or delivery by, through, or to a financial institution, by whatever means effected."[32] Congress used the word *includes* rather than *means*, which suggests that Congress intended to add to the common understanding of the word *transaction* rather than replace it.[33] The most inclusive term listed is *transfer*. A transfer would still be a transaction even if the transfer of title did not change the beneficial ownership of the property or was a fraudulent transfer voidable by the creditors or the government.

> ***"Federal money laundering investigations are among the most effective ways to thwart the criminal schemes of drug and organized crime groups."***

Mere possession or transportation of drug proceeds that does not involve some transfer is not a transaction.[34] If a suspect transports money from the basement to the attic of his house that would not be a transaction because there has not been any change in the custody or ownership of the money. To have a transaction under Section 1956, there must be some *disposition*, which means placing the property elsewhere, such that one gives the property over to the care or possession of another.[35] For example, if a suspect uses a courier to travel to the suspect's home and remove money owned by the suspect from under the suspect's bed and then transport the money to the suspect's beach house, that conduct by the courier would constitute two transactions.[36] The first transaction took place when the courier removed the money from under the owner's bed at the owner's home. The owner had constructive possession of the money at his home and he retained constructive possession of the money when the courier took the money from under the bed. The owner maintained constructive possession of the money throughout this example because the courier acted as his agent, and the suspect controlled what the

agent did with the money. A transaction, however, took place in this case when the courier took care and custody of money, even though the suspect maintained ownership and control over the money. The taking of the money from under the bed in this example was a transaction. The second transaction took place when the money was put under the bed at the beach house. When the money was put under the bed at the beach house, the courier gave up custody of the money. When the courier delivered the money to the beach house, that was a disposition of the money by him. That delivery or transfer was a transaction. Therefore, two transactions took place during one movement of money between two houses. No transaction occurred while the courier was merely transporting the money between the houses.[37] The above example only illustrates what constitutes a transaction within the meaning of Section 1956. There would have to be more facts given to determine whether any of the transactions violated Section 1956.

For a transaction to be considered money laundering under Section 1956, it must be a financial transaction. For purposes of Section 1956, *financial transaction* means a "transaction" which in any way or degree affects interstate or foreign commerce,[38] involving the movement of funds by wire or other means; one or more monetary instruments; the transfer of title to any real property, vehicle, vessel, or aircraft; or the use of a financial institution engaged in, or the activities of which affect, interstate or foreign commerce[39] in any way or degree. For example, giving drug proceeds to a courier is both a transfer and a delivery involving the

movement of funds, and it is also a transfer and a delivery involving one or more monetary instruments. It is, therefore, a financial transaction within the meaning of Section 1956(c)(4).[40]

For purposes of Section 1956, *monetary instruments* means coin or currency of the United States or of any other country, travelers' checks, personal checks,[41] bank checks and money orders, or investment securities or negotiable instruments in bearer form or otherwise in such form that title passes upon delivery. Under Section 1956,[42] *financial institution* is a term of art that includes the types of businesses targeted by someone intending to launder illegal proceeds. Examples of financial institutions listed in the statute include, but are not limited to, banks; savings and loans; credit unions; securities brokers; currency exchanges; issuers, redeemers, or cashiers of travelers' checks, checks, money orders, or similar instruments; insurance companies; dealers in precious metals, stones, or jewels; pawnbrokers; travel agencies; businesses engaged in vehicle sales; persons involved in real estate closings and settlements; the U.S. Postal Service; licensed casinos or other gaming establishments with annual gaming revenue of more than $10,000; and any other businesses designated by the secretary of the treasury in the Code of Federal Regulations similar to the businesses listed above.

Specified unlawful activity, under Section 1956 means racketeering as defined in Title 18, U.S. Code, Section 1961. Section 1961 provides that racketeering includes, but is not limited to, any act or threat involving murder; kidnapping; gambling; arson; robbery; bribery; extortion; dealing in obscene matter; counterfeiting; mail or wire fraud; obstruction of justice; slavery; money

laundering under Sections 1956 and 1957 of Title 18; sexual exploitation of children, interstate transportation of stolen vehicles; dealing in a controlled substance or listed chemical chargeable under state law and punishable by imprisonment for more than 1 year; or felonious manufacture, importation, receiving, concealing, buying, selling, or otherwise dealing in a controlled substance or listed chemical punishable under any law of the United States.[43]

A money laundering conviction under Section 1956 requires proof that the laundered funds constituted the proceeds of a predicate SUA.[44] However, a conviction under Section 1956 does not require the government to trace the laundered proceeds to a specific SUA. The evidence that funds are proceeds of an SUA can be established by circumstantial evidence. For example, where the predicate SUA is drug trafficking, it is enough if the government proves that the defendant engaged in drug trafficking and had no legitimate means of income. It can be inferred from those facts that the drug trafficker obtained the funds from drug trafficking.[45]

It would not be a money laundering transaction for a suspect to exchange money obtained from a legitimate source for illegal drugs.[46] Once that exchange has taken place, however, the money becomes proceeds of the drug transaction. If there is evidence that a drug trafficker is using illegal drug proceeds to buy more illegal drugs to sell, that drug purchase using drug proceeds would also constitute a money laundering transaction because the purchase of the drugs would be evidence of using the illegal drug proceeds with the "intent to promote" the carrying on of the SUA under Section 1956(a)(1)(A)(I).[47] Even if the drug trafficker does not use the proceeds to buy more drugs, it would be money laundering in violation of Section 1956 for him to engage in a financial transaction with those funds (e.g., depositing them in his bank account) with the intent to promote the SUA or evade taxes or with knowledge that the transaction is designed to disguise the nature of the illegal proceeds or avoid a state or federal transaction filing requirement.[48]

> ***"Mere possession or transportation of drug proceeds that does not involve some transfer is not a transaction."***

Suppose a wholesale illegal drug trafficker has fronted drugs to a retail drug trafficking customer. That is, the wholesaler has delivered drugs without first requiring payment from the retailer. The wholesaler expects payment sometime in the future, presumably once the retailer, in turn, has sold the drugs received from the wholesaler. When the retailer comes back later to pay the money owed to the wholesaler for the previous transaction, it would be reasonable to infer from the circumstances that the money the retailer is paying the wholesaler is proceeds from selling the illegal drugs previously delivered to him by the wholesaler. The transfer of the money from the retailer to the drug trafficker would be a financial transaction within the meaning of Section 1956 because the money would be proceeds of drug trafficking. It is not illogical to infer the additional intent to promote prong required under Section 1956. The payment for previously delivered drugs would satisfy the intent to promote requirement under Section 1956 by the payor reestablishing good credit with the drug supplier for future deliveries of illegal drugs. In addition, to prove intent to promote, some courts do not require that the SUA that is promoted be a future SUA. In which case, the SUA that is promoted could be a completed

SUA. For example, the payment for drugs already delivered would satisfy the intent to promote requirement under Section 1956, even though the offense promoted (the prior distribution of the illegal drugs) has already taken place.[49]

In certain circumstances, there may be proceeds of an SUA before the SUA is completed. For example, a drug dealer may insist on payment of $1,000 from his customer prior to delivering illegal drugs to the customer. If the drug dealer, in turn, deposits the $1,000 in a nominee name to conceal the illegal source of the funds at a bank prior to delivering the drugs to the customer, that deposit would be a money laundering offense under Section 1956. That is because the drug trafficker has engaged in a financial transaction with proceeds of an SUA to conceal the illegal source of the funds, even though the SUA has not yet been completed.[50] Section 1956 does not require that the money laundering transaction take place after the completion of the SUA crime. The statute has been interpreted to only require that the proceeds be received, actually or constructively, prior to the money laundering transaction.[51] Arguably, the drug trafficker in the above example may have completed the SUA of attempted possession with intent to distribute a controlled substance under Title 21, U.S. Code, Section 846.

A person convicted under Title 18, U.S.Code, Section 1956 is subject to a fine of up to $500,000 or twice the value of the property involved, whichever is greater, or imprisonment for not more than 20 years, or both.[52] In addition, a violation of Section 1956 subjects the violator to a civil fine of not more than the greater of the value of the property, funds, or monetary measurements involved in the transaction or $10,000.[53] In addition, a court, when imposing a sentence on a person convicted of violating Section 1956, shall order the person to forfeit to the federal government any property, real or personal, involved in the violation of those statutes, or any property traceable to such property.[54]

Furthermore, even if a suspect is not criminally prosecuted under Section 1956, any property, real or personal, involved in a transaction or attempted transaction in violation of Section 1956, or any property traceable[55] to such property, is subject to civil forfeiture.[56] Unlike a criminal case where the burden of proof is beyond a reasonable doubt, in a civil forfeiture case the government has the burden of proving that any property sought to be forfeited is subject to forfeiture by the lower standard of preponderance of the evidence.[57] If the government's theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, the government is required to establish that there was a substantial connection between the property and the offense.[58] An innocent owner's[59] interest in property may not be forfeited under any federal civil forfeiture statute.[60] The innocent owner has the burden of proving by a preponderance of the evidence that he is an innocent owner.[61]

Title 18, U.S. Code, Section 1957

Other federal statutes in addition to Title 18, U.S. Code, Section 1956 address money laundering activity.[62] For example, Title 18, U.S. Code, Section 1957 (hereinafter Section 1957) prohibits knowingly engaging in monetary transactions involving

over $10,000 derived from an SUA.[63] Unlike Section 1956, Section 1957 does not require proof that the suspect intended to promote the illegal activity, conceal proceeds, avoid the transaction reporting requirement, or even know that the transaction is designed to conceal or disguise the nature or ownership of the funds. Section 1957 only requires the government to prove that the defendant knew that the criminally derived property (valued at greater than $10,000) involved in the monetary transaction constituted proceeds obtained from some criminal offense.

Under Section 1957, once a person[64] knowingly engages or attempts to engage in a monetary transaction in criminally derived property of greater than $10,000, he has violated federal law. *Monetary transaction* as defined in Section 1957 means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined in Section 1956) by, through, or to a financial institution (as defined in Section 1956).[65] The "in or affecting interstate or foreign commerce" requirement of Section 1957 is both jurisdictional and an essential element of the offense. It is an issue to be determined by the jury.[66] The interstate nexus must be proven beyond a reasonable doubt.[67]

There are three ways to prove an interstate nexus: 1) the defendant used the channels of interstate commerce; 2) the defendant used instrumentalities of interstate commerce or persons or things in interstate commerce; or 3) the defendant's activities (although taken alone only minimally affect interstate commerce) when taken in aggregate with others similarly situated have a substantial relation to, or substantially affect, interstate commerce.[68] Checks drawn on federally insured banks or services purchased from an out-of-state company would be sufficient to establish the use of persons or things in interstate commerce without having to show substantial effect upon interstate commerce.[69] It is only if the conduct is purely intrastate, noncommercial, and traditionally regulated by state governments that the federal government must resort to proving some substantial relation to or effect upon interstate commerce. In *United States v. Allen*,[70] the court described the nexus to interstate commerce for the Section 1957 prosecution in that case as "overwhelming" where the defendant "deposited proceeds from the forged checks in a financial institution as defined in the statute, withdrew those funds, and transferred them by using cashier's checks to be deposited out of state."[71]

> ***"Section 1956 does not require that the money laundering transaction take place after the completion of the SUA crime."***

Section 1957 states that "[t]he term criminally derived property means any property constituting, or derived from, proceeds obtained from a criminal offense."[72] Criminally derived property under Section 1957 has been interpreted to have the same meaning as the word *proceeds* under Section 1956.[73] The government does not have to prove that the defendant knew the precise nature of the criminal offense from which the proceeds were derived.[74] However, the proceeds must, in fact, be from an SUA, as that term is defined in Section 1956.[75]

A person convicted under Section 1957 is subject to a fine as provided in Title 18,[76] imprisonment for not more than 10 years, or both. A court, when imposing a sentence on a person convicted of violating Section 1957, shall order the person to forfeit to the federal government any property, real or

personal, involved in the violation of those statutes, or any property traceable to such property.[77] In addition, a violation of Section 1957 subjects the violator to a civil fine of not more than the greater of the value of the property, funds, or monetary measurements involved in the transaction or $10,000.[78] Finally, even if no criminal prosecution is brought against a suspect, any property, real or personal, involved in a transaction or attempted transaction in violation of Section 1957, or any property traceable to such property, would still be subject to civil forfeiture.[79]

Conspiracy

Under Title 18, U.S. Code, Section 1956(h), any person who conspires to commit any offense defined in Sections 1956 or 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy. There are a number of advantages for the government to prosecuting a conspiracy under Section 1956(h) rather than the general conspiracy statute, Title 18, U.S. Code, Section 371. First, conviction under the general conspiracy statute does not provide a basis for criminal forfeiture, whereas conviction for a money laundering conspiracy under Section 1957(h) mandates forfeiture of all property involved in the conspiracy. If the conspiracy is a long-term conspiracy, the value of the assets could be substantial. Second, it is not required under Section 1956(h) to prove an overt act in furtherance of the conspiracy as required under Section 371. Third, the sentence for a conspiracy under Section 1956(h) is up to 10 years for a conspiracy to violate Section 1957 or up to 20 years for a conspiracy to violate Section 1956. Whereas,

the sentence for a conspiracy conviction under Section 371 is no more than 5 years.

A person who, in concert with others, launders proceeds from certain criminal activity may be charged and convicted as a coconspirator in that criminal activity because of his money laundering contribution to the crime. If the crime is drug trafficking, the conspirator could be charged under the federal drug conspiracy statute, Title 21, U.S. Code, Section 846[80] in addition to being charged with money laundering.

When the statute of limitations precludes prosecuting a suspect for the underlying crime, or there is insufficient evidence to prove the crimes, the government could still prosecute him for laundering the proceeds from that crime.[81] As with most other noncapital federal offenses, the statute of limitations for a money laundering offense itself is 5 years.[82] The statute of limitations begins to run as soon as the offense is committed. That means that the defendant must be formally charged with money laundering within 5 years of the commission of the money laundering offense. However, money laundering is a crime typically perpetrated after the underlying crime has been committed.

In a drug case, the government may be precluded from charging the suspect with the commission of the underlying offense because the statute of limitations (5 years for a noncapital federal drug charge) has run. However, the suspect could still be charged with conspiracy under Title 21, U.S. Code, Section 846 long after the statute of limitations has run for a given substantive criminal offense. The money laundering activity by a conspirator would be an overt act in furtherance of the conspiracy and thus extend the life of the conspiracy for

purposes of calculating the statute of limitations.[83]

The application of the statute of limitations in a conspiracy case is unique.[84] Unlike other offenses where the statute of limitations begins when the crime is first committed, in a conspiracy case, the statute of limitations does not begin to run until the conspiracy has ended. In the usual case, that point would be at the last overt act committed in furtherance of the conspiracy.[85]

The U.S. Supreme Court, in *Grunewald v. United States,*[86] recognized that in some circumstances, acts of concealment can be considered as acts in furtherance of the intended crime. The Court stated that "a vital distinction must be made between acts of concealment done in furtherance of the main criminal objectives of the conspiracy, and acts of concealment done after these central objectives have been attained, for the purpose only of covering up after the crime."[87] Acts considered in furtherance of the main objective would be considered acts in furtherance of the conspiracy and serve to delay the point at which the statute of limitations begins to run.

Money laundering, depending on the circumstances, can be viewed as an act of concealment in furtherance of a conspiracy, particularly in drug cases.[88] Money laundering is certainly a step taken by the conspirators to conceal the proceeds of the drug trafficking. Because the nature of large-scale drug trafficking necessitates that means will be needed to conceal the source of considerable illegal proceeds, laundering of drug proceeds can be considered a central objective of the drug conspiracy. Therefore, money laundering activities in many cases could be regarded as overt acts in furtherance of the drug trafficking conspiracy. As such, the money laundering acts would extend the conclusion of the drug trafficking conspiracy for the purpose of determining the date for calculating the statute of limitations on the drug trafficking conspiracy.[89]

> ***"...in a conspiracy case, the statute of limitations does not begin to run until the conspiracy has ended."***

Conclusion

Federal money laundering investigations are among the most effective ways to thwart the criminal schemes of drug and organized crime groups. Title 18, U.S. Code, Section 1956 is the primary federal money laundering statute. Section 1956 prohibits a person from knowingly engaging in financial transactions involving proceeds of certain crimes if the person does so with the intent to promote the crime or evade taxes or knows that the transaction is designed to conceal or disguise the criminal proceeds or avoid financial transaction reporting requirements. Title 18, U.S. Code, Section 1957 is another federal money laundering statute that prohibits knowingly engaging in monetary transactions involving over $10,000 derived from specified unlawful activity. Sections 1956 and 1957 both carry heavy fines and lengthy terms of imprisonment for violations. Even if a suspect is not criminally prosecuted under Section 1956 or 1957, any property, real or personal, involved in a transaction or attempted transaction in violation of Section 1956 or 1957 or any property traceable to such property is subject to civil forfeiture.✦

Endnotes

[1] U.S. Drug Enforcement Administration, "Money Laundering"; (visited March 7, 2006) *http://www.usdoj.gov/dea/programs/money.htm*.

[2] *Id.*

[3] *Id.*

[4] Under 18 U.S.C. § 1956, the proceeds laundered must be from "specified unlawful activity" for the activity to be money laundering. Specified unlawful activites are those

crimes listed as racketeering under 18 U.S.C. § 1961.

[5] *Supra* note 1.

[6] *Supra* note 1.

[7] Office of Legal Education, U.S. Department of Justice, Financial Investigations Seminar Participant Guide, Module 4-2 (2004).

[8] *Id*.

[9] *Id*.

[10] The financial transaction needs only to *involve* proceeds of an SUA. It is not required that the entire amount of the transaction *be* proceeds. If any part of the transaction involves proceeds then, assuming the other elements are present, the transaction would be a violation of § 1956. *See, e.g., United States v. Rodriguez*, 53 F.3d 1439, 1447 (7th Cir. 1995) (although only $1,000 of the $17,000 payment was tainted proceeds of an SUA, the purchase involved proceeds); *United States v. Jackson,* 935 F.2d 832, 840 (7th Cir. 1991). Once an asset is tainted with illegal proceeds it never loses its taint as proceeds. *United States v. Ward*, 197 F.3d 1076 (11th Cir. 1999). Furthermore, illegal proceeds retain their character as proceeds as they change form. For example, a loan secured with real property purchased with SUA proceeds would itself be proceeds. Furthermore, if that loan was used to purchase a car, the car would then also be proceeds. *See United States v. Pergler*, 1998 WL 887113 (N.D. Ill. 1998) (unreported in bound volume) (18 U.S.C. § 1957 prosecution). While a § 1956 violation requires the involvement of proceeds, involvement alone is not enough. 18 U.S.C. § 1956 has no application to ordinary commercial transactions that may simply involve proceeds of unlawful activity and nothing more. For there to be a money laundering violation under 18 U.S.C. § 1956, there must be evidence that the financial transaction is being done with the intent to promote the SUA or evade taxes or with knowledge that the transaction is designed to disguise the nature of the illegal proceeds or avoid a state or federal transaction filing requirement. Section 1956 is a money laundering statute not a money spending statute. *United States v. Rockelman*, 49 F.3d 418, 422 (8th Cir. 1995). Proof of knowledge that the funds are illegal proceeds coupled with an unusual transaction may be enough circumstantial evidence to prove the case. *United States v. Campbell*, 977 F.2d 854, 858 (4th Cir. 1992). If the elements in § 1956 are not present, there may still be a violation of § 1957.

[11] A large quantity of cash is highly probative of a connection to some illegal activity; however, a large quantity of cash in and of itself is insufficient even to establish probable cause to forfeit that cash as illegal proceeds, let alone prove beyond a reasonable doubt it is proceeds for purposes of proving money laundering. *See, e.g., United States v. $121,100.00 in U.S. Currency*, 999 F.2d 1503, 1506 (11th Cir. 1993) (drug proceeds forfeiture case under 21 U.S.C. § 881(a)(6)); *United States v. $506,231 in U.S. Currency*, 125 F.3d 442, 452-54 (7th Cir. 1997). In a drug money laundering case, the government must present some additional evidence connecting the money to illegal drug sales to establish that the cash is drug proceeds. It can be proven that money is proceeds of an SUA through circumstantial evidence. In a drug money laundering case, it is not necessary to trace the money from a particular drug sale. In *United States v. Blackman*, 904 F.2d 1250, 1257 (8th Cir. 1990), proof that the defendant was a drug trafficker who has no legitimate source of income was sufficient to infer that the large amount of money he wired was drug proceeds as defined in § 1956. *Id.* A net worth analysis may also be helpful in proving that the defendant's expenditures exceeded his legitimate income and, therefore, in turn, prove that certain property is the proceeds of an SUA. *See United States v. Nelson*, 851 F.2d 976, 980-981 (7th Cir. 1988). "Evidence of a differential between legitimate income and cash outflow is sufficient for a money laundering conviction, even when the defendant claims income from additional sources." *United States v. Webster*, 960 F.2d 1301, 1308 (5th Cir. 1992). Where the transaction in question involves funds withdrawn from an account where illegal proceeds have been commingled with legitimate funds, the government is not required to trace the illegal funds through the account and prove that it was only the illegal funds used in the transaction. It is sufficient to prove that the funds in question came from an account in which tainted proceeds were commingled with other legitimate funds. *See United States v. Garcia*, 37 F.3d 1359, 1365 (9th Cir. 1994), receded from on other grounds, *United States v. Jackson,* 167 F.3d 1280 (9th Cir. 1999). If that were not the case, a suspect could avoid prosecution under § 1956 by simply commingling legitimate funds with criminal proceeds. *United States v. Johnson*, 971 F.2d 562, 570 (10th Cir. 1992).

[12] When defendant is charged with laundering proceeds from an SUA that he committed, it is a virtual foregone conclusion that the defendant knew the property was proceeds from the SUA. *See United States v. Shorter*, 54 F.3d 1248, 1257 (7th Cir. 1995). However, proving knowledge that the money is illegal proceeds is sometimes more challenging when the money laundering defendant is not a principal in the perpetration of the underlying SUA. In such a case, the element of knowledge can be proven by showing that the defendant was willfully blind. To prove willful blindness, the government must present evidence that the defendant contrived to deliberately and purposely avoid learning facts that he knew would have confirmed that the property involved in the transaction represented proceeds of illegal activity. *United States v. Campbell*, 977 F.2d 854, 857 (4th Cir. 1992). The *Campbell* court ruled that the fraudulent nature of the transaction itself provided a sufficient basis to infer not only that the defendant knew the house was being purchased with illegal drug proceeds but also that she knew that the purpose of the transaction was to conceal the nature or ownership of the illegal proceeds. "[T]he knowledge components of the money laundering statute collapse into a single inquiry." Did the defendant know that the funds were derived from an illegal source? *Id.* at 858. *See also United States v. Frigerio-Migiano*, 254 F.3d 30, 35 (1st Cir. 2001) (the *Frigerio-Migiano* court found that there was insufficient evidence of willful blindness).

[13] To prove that the suspect knew that "the property involved in the financial transaction represents the proceeds of some form of unlawful activity," the government need only prove that he knew the property involved in the transaction represents proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state, federal, or foreign law, regardless of whether or

not such activity is listed in § 1956 as an SUA. 18 U.S.C. § 1956(c)(1) (West 2005).

[14] *Promote* means to further or contribute to the advancement, growth, enlargement, or prosperity of the illegal business. A classic example of promotion in a drug money laundering case would be using drug proceeds to buy more illegal drugs to sell. *United States v. Torres*, 53 F.3d 1129, 1137 n.6 (10th Cir. 1995). The degree of promotion need not be essential or substantial. In fact, the advancement of the enterprise by the money laundering transaction could be rather minimal. Purchasing an automobile with illegal drug proceeds to use that automobile to deliver illegal drugs would constitute a money laundering offense because the car would assist in advancing the drug enterprise. If, however, the vehicle was not intended to be used in the drug enterprise, it would not be a violation of the promotion subsection of § 1956 to purchase the automobile with illegal drug proceeds. *Id.* at 1138. The asset purchased does not have to be expensive to constitute a money laundering offense. Use of the proceeds derived from illegal drug trafficking to purchase pagers intended to be used by the drug trafficker to stay in contact with drug customers and accomplices would constitute a financial transaction intended to promote his illegal drug activities. *United States v. Jackson*, 935 F.2d 832, 841 (7th Cir. 1991). Under § 1956(a)(1)(A)(i), to convict somebody of money laundering who is not actually involved in the SUA, the government usually must charge the suspect as an aider and abettor in the money laundering under 18 U.S.C. § 2. For example, a realtor only looking to obtain a commission, could still be convicted as a money laundering accomplice if he knows that the money for the purchase of a house is drug proceeds, and he knows that the purchaser intends to use the house to store imported illegal drugs. That is because the realtor would be knowingly assisting the drug dealer in his scheme to promote the SUA of drug trafficking. If a suspect involves an asset such as a house, an automobile, or a cell phone in a financial transaction, but he does so not to promote the SUA, the suspect could still be charged with money laundering under one of the other alternative bases in § 1956, such as to conceal or disguise the nature, control, or ownership of the proceeds under § 1956(a)(1)(B)(i). *Jackson, supra.*

[15] Tax evasion is not an SUA. To violate § 1956 under this section, the suspect must have engaged in a transaction using proceeds of a listed SUA with intent to evade taxes.

[16] The government need not show that the defendant had a purpose to conceal. It is enough if the defendant knows that the financial transaction was designed by someone else to conceal or disguise the illegal proceeds. *United States v. Campbell*, 977 F.2d 854, 857 (4th Cir. 1992).

[17] It is not necessary to prove that the money laundering transaction concealed the identity of the participants (although that is relevant). Concealment of the funds is all that the government must prove. *Id.* at 858. *See also United States v. Wilson,* 77 F.3d 105, 109 (5th Cir. 1996). *But, see U.S. v. Herron*, 97 F.3d 234, 237 (8th Cir. 1996) (There was no evidence in the record that the appellants made any efforts to disguise the drug proceeds from crack cocaine sales wired from Springfield to Chicago; therefore, their convictions for money laundering were reversed.).

> ***"Money laundering, depending on the circumstances, can be viewed as an act of concealment in furtherance of a conspiracy, particularly in drug cases."***

[18] 31 U.S.C. § 5313 (West 2005).

[19] Pursuant to 31 C.F.R. § 103.27(a)(1) and (4) the CTR is to be filed by the financial institution with the commissioner of the Internal Revenue Service within 15 days from the occurrence of the reportable transaction.

[20] A *financial institution* is a bank (except bank credit card systems), a broker or dealer in securities, a money services business, a telegraph company, or a casino or card club with gross annual gaming revenues in excess of $1 million, a person subject to supervision by any state or federal bank supervisory authority, a futures commission merchant, or an introducing broker in commodities. 31 C.F.R. § 103.11(n).

[21] *Currency* means: "The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes, and Federal Reserve notes. Currency also includes official foreign bank notes customarily used and accepted as a medium of exchange in a foreign country." 31 C.F.R. § 103.11.

[22] 31 C.F.R. § 103.22. Although the secretary of the treasury (SOT) has been given authority by Congress in 31 U.S.C. § 5313 to require the filing of CTRs for monetary instruments, the SOT has not required the filing of a CTR for monetary instruments in 31 C.F.R. § 103.22(a)(1). The SOT has only required the filing of CTRs for coin or currency greater than $10,000.

[23] 31 C.F.R. § 103.22.

[24] A domestic financial institution and a partner, director, officer, or employee of a domestic financial institution who willfully violates the CTR provisions is liable for a civil penalty in an amount not greater than the amount involved in the transaction (not to exceed $100,000) or $25,000. 31 U.S.C. § 5321(a)(1). The SOT may impose a civil penalty of not more than $500 on any financial institution that negligently violates the CTR provisions. If, however, the financial institution engages in a pattern of negligent violations of the CTR provisions, the SOT could impose a civil penalty of not more than $50,000. 31 U.S.C. § 5321(a)(6) (West 2005).

[25] A person who willfully violates the CTR provisions shall be fined not more than $250,000, imprisoned for not more than 5 years, or both. 31 U.S.C. § 5322(a). A person who willfully violates the CTR provisions while violating any other law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12 month period shall be fined not more than $500,000, imprisoned for not more than 10 years, or both. 31 U.S.C. § 5322(b).

[26] 31 U.S.C. § 5324 (West 2005).

[27] Pursuant to 31 U.S.C. § 5324(d), a CTR violation is punishable by a fine in accordance with 18 U.S.C. § 3571, imprisonment for up to 5 years, or both. Whoever violates § 5324 while violating another law of the United States or as part of the pattern of illegal activity involving more than $100,000 in a 12-month period shall be fined twice the amount provided in 18 U.S.C. § 3571, imprisoned for up to 10 years, or both. This penalty section was added in 1994

to § 5324 by Congress (H.R. Rep. No. 103-438, at 22 (1994) in response to the U.S. Supreme Court decision in *Ratzlaf v. United States*, 510 U.S. 135 (1994), which interpreted the previously applicable penalty provision contained in § 5322 to require that the government must prove the defendant knew that structuring was against the law. With this Congressional change, it is not required for the government to prove the defendant knew it was against the law to structure.

[28] 31 U.S.C. § 5324(a)(1) (West 2005).

[29] 31 U.S.C. § 5324(a)(2) (West 2005).

[30] A person structures a transaction if that person, acting alone or with others, conducts one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements under 31 C.F.R. § 103.22. *See* 31 C.F.R. § 103.11(gg). The term *in any manner* includes, but is not limited to, breaking down a single sum of currency that exceeds $10,000 into smaller sums. The total sum of the transactions themselves need not exceed the $10,000 reporting threshold at any single financial institution in any single day to constitute structuring. *Id.* It is a violation of § 5324 to structure transactions to avoid the reporting requirements, even if the funds used in the structuring are lawfully obtained. *See United States v. Gabel*, 85 F.3d 1217, 1223 (7th Cir. 1996).

[31] 31 U.S.C. § 5324(a)(3) (West 2005).

[32] 18 U.S.C. § 1956(c)(3) (West 2005).

[33] The dictionary definition of *transaction* is "an exchange or transfer of goods, services, or funds." Merriam Webster's Collegiate Dictionary 1252 (10th ed. 1993). Under the legal principle of *ejusdem generis*, the definition of *transaction* as found in 18 U.S.C. § 1956 would probably exclude services because services are not logically within the category of things listed as examples of transactions in that statute.

[34] A few cases suggest that movement of funds is enough to constitute a transaction. Close reading of those cases reveals that they actually discuss the added requirements for financial transactions, and the facts indicate more than mere possession or transportation of money. *See, e.g., United States v. Dimeck*, 24 F.3d 1239, 1246 (10th Cir. 1994), wherein there was an actual disposition of the funds. The defendant "*moved* funds by 'other means' when he *delivered* the funds to Moore." (emphasis added) The delivery of the money to Moore was more than a movement of the money, it was a transaction. *See also United States v. Wydermyer*, 51 F.3d 319, 326-327 (2nd Cir. 1995). In *Wydermyer,* the defendants were arrested after the undercover agents gave them money represented to be illegal proceeds. The court stated that the handover of the money was a movement of funds and, therefore, a financial transaction. The delivery of the money was certainly a movement of funds, but it was more than a mere movement of the funds; it was also a transfer from the agents to the defendants.

[35] *United States v. Puig-Infante*, 19 F.3d 929, 938 (5th Cir. 1994). *See also United States v. Reed*, 77 F.3d 139, 143 (6th Cir. 1996) (en banc).

[36] B. Frederick Williams and Frank D. Whitney, Federal Money Laundering, Crimes and Forfeitures § 2.1.2, at 23 (1999).

[37] *Id*.

[38] As a general rule, "the use of federally insured banks and/or the transport of monies across state borders to facilitate the money laundering create a sufficient nexus to interstate commerce to allow application of § 1956." *United States v. Owens,* 159 F.3d 221, 226 (6th Cir. 1998). Use of a personal or business check in a transaction necessarily involves at some stage a bank engaged in interstate commerce. *United States v. Canavan*, 153 F. Supp. 2d 811 (D. Md. 2001). In a case that does not involve a banking institution, there must be some other evidence proving an affect on inter-state or foreign commerce by the transaction. For a federal statute whose authority is based upon the Commerce Clause to pass constitutional muster, there must be a showing that the activity being regulated 1) is a channel of interstate or foreign commerce, 2) uses instrumentality of interstate or foreign commerce, or 3) has a substantial effect on interstate or foreign commerce. *United States v. Lopez*, 514 U.S. 549 (1995). 18 U.S.C. § 1956 is typically reviewed by the courts under the "substantial effect" portion of the interstate or foreign commerce test. The general view of the courts is that money laundering itself is a quintessential economic activity that by its nature, has a substantial effect on interstate or foreign commerce. *See, e.g., United States v. Goodwin*, 141 F.3d 394, 399 (2nd Cir. 1997). Although any one money laundering transaction may have a rather trivial impact on interstate or foreign commerce, when reviewing a statute for constitutional sufficiency, the courts do not look at the transaction in isolation to determine its impact on interstate or foreign commerce. The courts look at the transaction in aggregate and take into consideration all other persons who are similarly situated and involved in that type of money laundering transaction to determine whether that conduct would have a substantial impact on interstate or foreign commerce. Using the aggregation prism, the courts have had little difficulty in ruling that the SUA of drug trafficking has a substantial effect on interstate or foreign commerce. *See, e.g., United States v. Lerebours*, 87 F.3d 582, 584 (1st Cir. 1996). Section 1956 does not use the constitutional "substantially affecting" language. Instead, Congress assumed the aggregation principle and only requires proof in § 1956(c)(4) that the transaction "in any way or degree affects interstate or foreign commerce." As a consequence, establishing an interstate or foreign commerce nexus has not been a difficult hurdle to overcome in the usual drug proceeds money laundering case. Although the interstate or foreign commerce hurdle in a § 1956 or § 1957 money laundering case is not a high hurdle, it should not be overlooked because it is a federal jurisdictional requirement and an element of the offense that must be proven beyond a reasonable doubt in each case. There must be circumstantial or direct evidence introduced at trial that the transaction has some minimal effect on interstate or international commerce. *United States v. Grey*, 56 F.3d 1219, 1223-1226 (10th Cir. 1995). In a money laundering case involving an illegal gambling SUA, a simple hand-to-hand transfer of money from one person to another in and of itself would not be sufficient to prove the interstate or foreign commerce connection. *Id.* To prove the interstate or foreign commerce nexus under § 1956(c)(4), courts are usually satisfied with circumstantial evidence from which it could be inferred that the money or drugs had traveled

between states during or after the transaction. In *United States v. Burgos*, 254 F.3d 8, 13 (1st Cir. 2001), the court found that there was a sufficient effect on interstate commerce for a money laundering charge where an informant had told the defendant when he arranged the exchange of money for drugs that the person delivering the cocaine to the informant had just arrived from New York and was impatient to return there. In a case where the SUA is drug trafficking, the proof that there was an effect on interstate commerce could be proven by evidence that after the transaction, the defendant was driving down the interstate highway with the money. *United States v. Gallo*, 927 F.2d 815, 823 (5th Cir. 1991). The *Gallo* court quoted from 21 U.S.C. § 801 and ruled that because Congress has found that drug traffick-ing has an effect on interstate and foreign commerce, it is reasonable to conclude that laundering the proceeds of drug trafficking has a similar effect. *Id.*

[39] "Virtually any exchange of money between two persons constitutes a financial transaction." Jason Shuck & Mathew E. Unterlack, *Money Laundering*, 33 Am. Crim. L. Rev. 881, 891 (Spring 1986). Under 18 U.S.C. § 1956(a)(4)(B), "[i]t is essential to prove an actual nexus to interstate commerce." *United States v. Leslie,* 103 F.3d 1093, 1101 (2nd Cir. 1997). To prove that nexus, however, "[t]he government need only prove that the individual subject transaction has, at least, a *de minimis* effect on interstate commerce." *Id.* "Proof that a savings institution's accounts are federally insured is certainly sufficient to prove that the transaction involved a financial institution, the activities of which affect interstate commerce under 18 U.S.C. § 1956(c)(4)(B)." *Id.* at 1102. Any financial transaction involving a financial institution under § 1956(c)(4)(B) is also a monetary transaction under § 1957. Use of an FDIC federally insured bank to facilitate a transaction is sufficient to establish that the transaction involved a financial institution that is engaged in, or the activities of which affect, interstate commerce under § 1956(c)(4)(B). *United States v. Ford*, 184 F.3d 566, 583 (6th Cir. 1999). The involvement of the financial institution in the transaction does not have to be integral to the charged count. For example, withdrawing money from a bank or depositing a check in a bank either before or after the charged transaction, although only incidental to the charged transaction itself, would be enough to involve the financial institution in the transaction. The fact that the bank is federally insured would establish an interstate nexus. *United States v. Oliveros*, 275 F.3d 1299, 1303-1304 (11th Cir. 2001).

[40] *United States v. Reed*, 77 F.3d 139, 142 (6th Cir. 1996) (en banc).

[41] To be a monetary instrument under 31 C.F.R. § 103.11(u), a personal check must be in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery. Under § 1956(5), any personal check is a monetary instrument, regardless of whether it is in bearer form or title passes upon delivery. *See, e.g.*, *United States v. Prince*, 214 F.3d 740, 751 (6th Cir. 2000) (writing a check to the defendant constituted a transfer or disposition of a monetary instrument). In any case, a *financial transaction* under § 1956(4)(A) in pertinent part "means a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments." Consequently, the movement of funds via a personal check would be the movement of funds by other means and, therefore, a financial transaction under § 1956(4)(A)(i) regardless of whether the personal check is viewed as a monetary instrument under § 1956(c)(5). *See United States v. Arditti*, 955 F.2d 331(5th Cir. 1992) (case involving issue whether a cashier's check was a bank check).

[42] *See* 31 U.S.C. § 5312(a)(2) (West 2005), incorporated by reference into 18 U.S.C. § 1956(a)(6) (West 2005).

[43] Simple possession of a controlled substance under 21 U.S.C. § 844 is generally not an SUA under § 1956. All drug trafficking SUAs must be felonious. *See* 18 U.S.C. § 1961(1). Under § 844, simple possession of a controlled substance is a misdemeanor, except possession of more than 5 grams of cocaine base (crack), which is punishable by 5 to 20 years imprisonment, and possession of any quantity of flunitrazepam (trade name: Rohypnol), which is punishable by up to 3 years imprisonment.

[44] *United States v. Mankarious*, 151 F.3d 694 (7th Cir. 1998).

[45] *United States v. Blackman*, 904 F.2d 1250 (8th Cir. 1990).

[46] Under 21 U.S.C. § 881, however, if a person is intending to furnish lawfully obtained funds in exchange for illegal drugs, those funds are subject to civil forfeiture.

[47] *See United States v. Martinez*, 151 F.3d 384, 389 (5th Cir. 1998); *United States v. Torres*, 53 F.3d 1129, 1137 n.6 (10th Cir. 1995).

[48] *See United States v. Kennedy,* 64 F.3d 1465 (10th Cir. 1995).

[49] *See, e.g.*, *United States v. King*, 169 F.3d 1035, 1039 (6th Cir. 1999) (paying for prior drug shipments may constitute promotion when the payment encourages further drug transactions); *United States v. Reed*, 167 F.3d 984, 992-993 (6th Cir. 1999); *United States v. Cavalier*, 17 F.3d 90, 93 (5th Cir. 1994) (the transfer of a check from an insurer to an automobile lienholder promoted the previously committed underlying fraud of filing a false insurance claim and, therefore, satisfied the intent to promote requirement under § 1956); *contra United States v. Heaps*, 39 F.3d 479, 483-486 (4th Cir. 1994), overruled on other grounds by *United States v. Cabrales*, 524 U.S. 1 (1998) (In *Heaps*, the court found that the payment of drug proceeds was merely to satisfy a debt of a completed and final drug transaction. There were no subsequent drug transactions, and there was no evidence that the purpose of the payment was to encourage the defendant to supply more drugs or to create goodwill for future drug transactions.); *United States v. Skinner*, 946 F.2d 176, 177-178 (2nd Cir. 1991) (recurrent payment for drugs sold on consignment constituted a money laundering financial transaction to promote the illegal drug trafficking).

[50] *See generally United States v. Mankurious*, 151 F.3d 694, 703 (7th Cir. 1998) (proceeds for purposes of the money laundering charge were generated before the actual mailing that constituted the mail fraud).

[51] Williams et al., *supra* § 9.2.4, at 296.

[52] 18 U.S.C. § 1956(a)(1)(B)(ii) (West 2005).

[53] 18 U.S.C. § 1956(b) (West 2005).

[54] 18 U.S.C. § 982 (West 2005).

[55] Property traceable to a money laundering offense shall be forfeited without regard to any increase in its value due to market appreciation or anything the defendant may have added to the property, such as improvements made by the defendant's personal efforts. *United States v. Hawkey*, 148 F.3d 920, 928 (8th Cir. 1998).

[56] 18 U.S.C. § 981 (West 2005).

[57] 18 U.S.C. § 983(c)(1) (West 2005).

[58] 18 U.S.C. § 983(c)(3) (West 2005).

[59] 18 U.S.C. § 983(d)(2)(A) provides that with respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, the term *innocent owner* means an owner who did not know of the conduct giving rise to forfeiture, or upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be

expected under the circumstances to terminate such use of the property.

[60] 18 U.S.C. § 983(d)(1) (West 2005).

[61] 18 U.S.C. § 983(d) (West 2005).

[62] *E.g.*, 31 U.S.C. § 5332 (West 2005) (bulk cash smuggling of more than $10,000 on person or conveyance into or out of the United States with intent to evade the Currency and Monetary Instrument Report (CMIR) requirement under 31 U.S.C. § 5316); 31 U.S.C. § 5316 (West 2005) (transporting currency or other monetary instrument of more than $10,000 into or out of the United States must be reported on a CMIR); 31 U.S.C. § 5321 (West 2005) (civil penalties for violating the CMIR requirement); 31 U.S.C. § 5324 (c) (West 2005) (criminal penalties for evading the CMIR reporting requirement); 31 U.S.C. § 5318 (g) (West 2005) (suspicious activity report (SAR)); 31 U.S.C. § 5321 (West 2005) (civil penalty for failing to file an SAR); 31 U.S.C. § 5322 (West 2005) (criminal penalties for failure to file an SAR); 31 U.S.C. § 5325 (West 2005) (record-keeping requirement for financial institutions that issue a note in a transaction involving coin or currency of $3,000 or more); 31 U.S.C. § 5324 (West 2005) (criminal penalties for evading the record-keeping requirement); 31 U.S.C. § 5313 (West 2005) (currency transaction report (CTR) required for financial institutions engaging in a currency transaction exceeding $10,000); 31 U.S.C. § 5321 (civil penalties for violating CTR requirement); 31 U.S.C. §§ 5322, 5324 (West 2005) (criminal penalties for failing to file or evading the CTR requirement); 31 U.S.C. § 5317(c)(1) (West 2005) (criminal forfeiture for CTR, CMIR, or structuring violation); 26 U.S.C. § 6050I (reporting cash payments of more than $10,000 in a trade or business (IRS Form 8300)); 26 U.S.C. § 7203 (criminal penalties for failing to file IRS Form 8300). Note that 31 U.S.C. § 5331 has a provision that parallels the requirements of 26 U.S.C. § 6050I. Section 5331, however, uses the terms *coins or currency* in place of the term *cash* used in § 6050I. The term *currency* in § 5331 has the same definition as the term *cash* in § 6050I. 26 U.S.C. § 6050I(c)(1)(A) provides that cash received in a transaction reported under title 31 (31 U.S.C. § 5331) need not be reported under § 6050I if the SOT determines that reporting the transaction under § 6050I would duplicate the reporting to the treasury under Title 31. The penalty for violating § 5331 is up to 5 years or a fine up to $250,000 (which is 10 times the maximum fine for an individual under § 6050I). A person violating § 5331 while violating another federal law or as part of a pattern of illegal activity involving more than $100,000 in a 12-month period shall be fined up to $500,000, imprisoned up to 10 years, or both. 31 U.S.C. § 5324(b) contains a provision, similar to the provision at 26 U.S.C. § 6050I(f), prohibiting a person from evading the reporting requirements of § 5331 by causing or attempting to cause a nonfinancial trade or business to fail to file a report or file a report that contains material omissions or misstatements or to structure a transaction. The above crimes could be object crimes of a conspiracy in violation of 18 U.S.C. § 371, which prohibits a conspiracy to commit any offense against the United States.

[63] 18 U.S.C. § 1957 (f)(1) expressly states that it is not a monetary transaction in violation of § 1957 if the transaction is necessary to preserve a person's right to representation as guaranteed by the Sixth Amendment to the Constitution. The investigator should keep in mind that the Sixth Amendment Right to Counsel only applies to representation in criminal matters. The Sixth Amendment Right to Counsel does not apply to a civil forfeiture proceeding. *See United States v. 87 Blackheath Road*, 201 F.3d 98 (2nd Cir. 2000). Therefore, an attorney who knowingly receives criminal proceeds in excess of $10,000 to represent a suspect in a civil forfeiture would not be afforded any protection under § 1957(f)(1). Even in representing a client in a criminal matter, the Sixth Amendment Right to Counsel only attaches at the inception of adversarial judicial proceedings (information, indictment, or initial appearance) and at every subsequent critical stage of the prosecution. *See Massiah v. United States,* 377 U.S. 201 (1964); *United States v. Wade,* 388 U.S. 218 (1967); *Kirby v. Illinois*, 406 U.S. 682 (1972). Arguably, therefore, criminal proceeds over $10,000 knowingly received by an attorney prior to the attachment of a suspect's Sixth Amendment Right to Counsel would not fall under the protection of § 1957(f)(1). 18 U.S.C. § 1957(f)(1) was enacted in 1988. In 1989, the U.S. Supreme Court ruled that a defendant does not have a Sixth Amendment right to be represented by an attorney he cannot afford. *Caplin and Drysdale, Chartered v. United States*, 491 U.S. 617, 624 (1989). In *Caplin and Drysdale* the Court ruled that forfeiting the proceeds of drug trafficking and, therefore, depriving the defendant of his ability to pay his attorney of choice from those proceeds was not a violation of the defendant's Sixth Amendment Right to Counsel. The Supreme Court determined that the proceeds of the defendant's drug trafficking do not belong to the defendant. The Court stated that under the criminal drug forfeiture statute, 21 U. S. C. § 853(c), all right, title, and interest in property derived from or used in the commission of a crime under Title 21 vests in the United States upon the commission of the drug crime. In like manner, the money laundering civil forfeiture statute, 18 U.S.C. § 981, states that all right, title, and interest in property involved in a transaction in violation of §§ 1956, 1957, or 1960 or any property traceable to such property shall vest in the United States upon commission of the money laundering transaction. The U.S. Department of Justice has adopted policies for attorney fee cases that limit prosecutions of attorneys under § 1957. The assistant attorney general in charge of the criminal division must give prior approval "for prosecutions of attorneys (under either § 1956 or § 1957) where the financial transaction is one involving attorneys' fees. This approval is required regardless of whether the fee is received in a criminal or civil case." USAM 9-105.3000(3). *See also* USAM 9-105.600 for further guidance.

[64] The person does so while in the United States or within the special maritime territorial jurisdiction of United States or the person does so outside the United States and is a national of the United States or an alien lawfully admitted for permanent residence in the United States. Under 18 U.S.C. § 1957, the "special maritime and territorial jurisdiction of United States" includes, but is not limited to, the high seas, any aircraft or vessel belonging to the United States, any state, territory, district, or possession thereof or belonging to any United States citizen or corporation, any place outside the jurisdiction of any nation with respect to any act by or against a national of the United States. According to 8 U.S.C. § 1101(a)(20), a *national of the United States* is a U.S. citizen or a person who is not a citizen but owes permanent allegiance to the United States.

[65] 18 U.S.C. § 1957(f)(1) (West 2005).

[66] *United States v. Allen*, 129 F.3d 1159, 1163 (10th Cir. 1997).

[67] *United States v. Ripinsky*, 109 F.3d 1436, 1443 (9th Cir. 1997), overruled in part on other grounds, *United States v. Sablan*, 114 F.3d 913 (9th Cir. 1997) (en banc).

[68] *Id.* at 1444.

[69] *Id.*

[70] 129 F.3d 1159, 1164 (10th Cir. 1997).

[71] *Id.* at 1166.

[72] 18 U.S.C. § 1957(f)(2) (West 2005).

[73] *United States v. Savage*, 67 F.3d 1435, 1442 (9th Cir. 1995).

[74] *United States v. Allen*, 129 F.3d 1159, 1164 (10th Cir. 1997).

[75] 28 U.S.C. § 1957(f)(3) (West 2005).

[76] 18 U.S.C. § 3571 (West 2005).

[77] 18 U.S.C. § 982 (West 2005).

[78] 18 U.S.C. § 1956(b) (West 2005).

[79] 18 U.S.C. § 981 (West 2005).

[80] *See, e.g., United States v. Otis*, 127 F.3d 829 (9th Cir. 1997). *See also* B. Frederick Williams and Frank D. Whitney, Federal Money Laundering, Crimes and Forfeitures § 1.3, n.34 (1999).

[81] *United States v. La Mata*, 266 F.3d 1275, 1291 (11th Cir. 2001).

[82] 18 U.S.C. § 3282 (West 2005).

[83] *United States v. Arnold*, 117 F.3d. 1308 (11th Cir. 1997).

[84] Even though a conspiracy involves an agreement, it continues beyond the moment of the agreement until the object of the conspiracy is fulfilled. "A conspiracy is constituted by an agreement, it is true, but it is the result of the agreement rather than the agreement itself, just as a partnership is constituted by a contract, is not the contract, but is the result of it. The contract is instantaneous; the partnership may endure as one and the same partnership for years. A conspiracy is a partnership in criminal purposes. That as such it may have continuation in time." *United States v. Kissel*, 218 U.S. 601, 608 (1910).

[85] *Grunewald v. United States,* 353 U.S. 391, 396-397 (1957). In the case of a Title 21 conspiracy where there are no alleged overt acts, the statute of limitations does not begin to run until the conspiracy is terminated. *United States v. Heldon*, 479 F. Supp. 316, 320 (D. Pa. 1979).

[86] 353 U.S. 391, 400 (1957).

[87] *Id.* at 405.

[88] *Supra* note 83.

[89] *Supra* note 83 at 1313-1314.

Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.

Wanted: Notable Speeches

The *FBI Law Enforcement Bulletin* seeks transcripts of presentations made by crim-inal justice professionals for its Notable Speech department. Anyone who has delivered a speech recently and would like to share the information with a wider audience may submit a transcript of the presentation to the *Bulletin* for consideration.

As with article submissions, the *Bulletin* staff will edit the speech for length and clarity, but, realizing that the information was presented orally, maintain as much of the original flavor as possible. Presenters should submit their transcripts typed and double-spaced on 8 °- by 11-inch white paper with all pages numbered. When possible, an electronic version of the transcript saved on computer disk should accompany the document. Send the material to:

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The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.

Officer Howe

After a citizen advised him of a house fire, Officer Jerry Howe of the Newport, Oregon, Police Department immediately responded to the residence. Upon arrival, he began to check for victims inside. After determining that the front door would be an unsafe way to access the house, Officer Howe found a side door and entered. Despite heavy smoke, he located an individual on the floor and helped the semiconscious person outside. The quick actions of Officer Howe saved the victim's life.

Officer Willis

Officer Gerren Willis of the Gaston County, North Carolina, Police Department responded to a residence where a newly born baby boy was unresponsive. As the first responder, he went to a bedroom, where the mother had just given birth and the father had been unsuccessful in his attempts at CPR. Quickly, Officer Willis cleared the child's airway of an obstruction and revived him. Shortly thereafter, emergency medical personnel arrived and took over the care of the infant. Today, because of the actions of Officer Willis, the child is a healthy baby boy.

Deputy Sergeant Sims

Deputy Sergeant Chris Sims of the Moultrie County, Illinois, Sheriff's Office responded to a call of an elderly man who had fallen through the ice into a pond while trying to rescue his dog. Upon arrival, Officer Sims observed the individual holding onto the edge of the ice approximately 60 feet from the shore with only his head above the water. He also saw part of an extension ladder tied to a 100-foot extension cord laying on the ice. Having been in the water for over 20 minutes, the man stated that he could not hold on much longer. Quickly, Officer Sims tied the extension cord to a tree and, after three attempts, got the ladder close enough to the victim for him to hold on. Officer Sims pulled the person to safety. The quick, selfless actions by Deputy Sergeant Sims saved the man's life. The dog also was rescued.

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Patch Call

The center of the patch of the Fountain Valley, California, Police Department features a fountain for which the city is named. The 405 Freeway, depicted in silver and black, and the Santa Ana River, in blue, sit to the right. The Pacific Ocean and its beaches, colored blue and silver, are on the left. Also featured are the San Gabriel Mountains, the sun, and green farmland.

The patch of the Hamilton, Illinois, Police Department features the Mississippi River, recognizing the city's location on its shore, along with a dam and powerhouse. The American Bald Eagle in the center acknowledges that Hamilton is a winter resting ground for the birds. The Keokuk, Iowa, Police Department, located across the river, also has adopted the patch.